

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

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5 UNITED STATES OF AMERICA,)
6 Plaintiff,) Case No.
7 vs.) 12CR062
8 ERNEST McCLAIN,)
9 Defendant.)

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13 TRANSCRIPT OF PROCEEDINGS HAD BEFORE THE HONORABLE
14 JUDGE DAN A. POLSTER, JUDGE OF SAID COURT,
15 ON FRIDAY, NOVEMBER 30TH, 2012,
16 COMMENCING AT 1:30 O'CLOCK P.M.

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21 Court Reporter: GEORGE J. STAUDUHAR
22 801 W. SUPERIOR AVE.,
23 SUITE 7-184
24 CLEVELAND, OHIO 44113
25 (216) 357-7128

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1 APPEARANCES:

2 On behalf of the Government:

3 OFFICE OF THE U.S. ATTORNEY
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5 801 W. Superior Avenue, Suite 400
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6
7 On behalf of the Defendant:

8 MCGINTY, HILOW & SPELLACY
9 BY: WILLIAM MCGINTY, ESQ.
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1 P R O C E E D I N G S

2 THE COURT: Good afternoon. Please be
3 seated.

4 All right. We are here on case 1:12CR62,
5 United States versus Ernest McClain. Mr. McClain is here
6 with Mr. McGinty. I have Mr. Sullivan and Ms. Klump for
7 the Government. And I assume we will have Mr. Abraham
8 for the Probation Department.

9 We are here for sentencing, and Mr. McClain
10 entered a guilty plea pertaining to trafficking a minor
11 across state lines for the purposes of prostitution. I
12 requested the preparation of a presentence report, which
13 I have received and reviewed.

14 Mr. McClain, have you received a copy of the
15 report?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: And did you have a chance to
18 read it carefully, to discuss it with Mr. McGinty, and
19 to ask him any questions about it that you might have
20 had?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: All right. There are no
23 objections to the report filed by the Government or the
24 Defendant.

25 I want to go over the advisory calculations.

1 They are, in fact, only advisory, but I am required to
2 calculate the advisory range correctly. We start at a
3 base offense level of 12. We add two levels because
4 Mr. McClain and his co-Defendant used a computer to
5 entice the victim or to entice persons to engage in
6 sexual conduct with the victim who was a minor.

7 We add two more levels because this offense
8 involved the commission of sex acts or sexual contact,
9 and we add two more levels because the evidence shows
10 that Mr. McClain was an organizer or leader in activity
11 that did not involve five or more participants. So 30
12 plus 2 plus 2 plus 2 is 36. There are multiple counts,
13 but that doesn't change the adjusted offense level. So
14 it stays at 36.

15 Now, the probation department has not
16 recommended the adjustment for acceptance of
17 responsibility based on the version that is reflected for
18 the Defendant.

19 Mr. McGinty, you didn't object to that, so I
20 take it you agree that your client should not get the
21 adjustment?

22 MR. MCGINTY: Judge, I don't agree with
23 that. I think he should, but I have also met with my
24 client during the course of reviewing this right here,
25 and I was hoping the Court would allow him to speak with

1 you so that he can confirm the fact that his admission of
2 guilt, acceptance of responsibility in this case so he
3 could get the benefit of that under the Sentencing
4 Guidelines. That's the best I could do.

5 THE COURT: Well, I will take that under
6 advisement when it comes to hearing from Mr. McClain. I
7 agree with Mr. Abraham, that what he said so far doesn't
8 cut it with me. So based on what he said, I don't
9 believe he is eligible for the two levels.

10 I assume, Mr. Sullivan, and, Ms. Klump, that
11 if Mr. McClain qualifies for the two levels, you will
12 move for the third level off. Is that right?

13 MR. SULLIVAN: Yes.

14 THE COURT: Okay. All right. Well, it is
15 3 or nothing. So it is either 36 if there is no
16 acceptance and a 33 if there is. Mr. Abraham has
17 correctly computed, added up all the points and comes up
18 with Criminal History Category V.

19 Now, I have Mr. McGinty's sentencing
20 memorandum in which he argues — you argue that V
21 overstates the dangerousness of Mr. McClain, and I guess
22 you can argue that in your remarks if you wish.

23 MR. MCGINTY: Thank you, your Honor.

24 THE COURT: But if we count all the points,
25 you agree we are in Criminal History Category V?

1 MR. MCGINTY: I do, your Honor.

2 THE COURT: All right. Well, a 36-V is 292
3 to 365, and a 33-V is 210 to 262. Obviously, if you
4 convince me that it should be a IV, Category IV, that
5 would be a little less. Okay.

6 Then I will hear from both counsel and, of
7 course, from Mr. McClain if he wishes.

8 So, Mr. McGinty?

9 MR. MCGINTY: Thank you, your Honor. Shall
10 I go to the podium?

11 THE COURT: Either way, Bill, that's fine.

12 MR. MCGINTY: Judge, if it please the Court,
13 what I would like to say and to follow up what I said in
14 my sentencing brief is that he came from a — didn't
15 start off with the best of a family foundation. He has a
16 wonderful mother, present here today. He has family
17 members, sister, first cousin and an aunt that are here
18 and truly love Mr. McClain, there is no question about
19 that, and they have been here on a number of other
20 occasions when we appeared before the Court.

21 But that doesn't change the fact that he was
22 the product of a relationship where it was not marriage.
23 His mother was age 15, started off going first residing
24 with her mother, and I found out today — and I was not
25 able to put it in my brief — the reason they wanted to

1 foster care because there was incest inside the house.
2 So he started out with that, went into foster care, and
3 then into public housing thereafter.

4 There was no involvement from the natural
5 father and pretty much to this day has been hit or miss,
6 at best, with his father; hasn't seen him in a while, and
7 at the age of 15, he suffered a serious car accident, one
8 that involved about three and-a-half years I think total,
9 in and out of hospitals for two years. Presently as a
10 result of that accident, he still has rods in his femurs
11 in both legs.

12 And as you can see he suffered serious
13 physical damage to his head, which resulted in a number
14 of surgeries, to do the best they possibly could with a
15 scarring issue.

16 Thereafter, ambulation was a problem for a
17 while and took him a number of years to get full use of
18 his legs. Now, when he is at the institution, he has a
19 cane at all times that he is supposed to use while he
20 gets around. And he indicates — and I put into my
21 brief, and I think it is important — is that during the
22 winter months, when it really gets bad, he needs the
23 ability to have a wheelchair because he just can't get
24 around at that point.

25 Judge, one of the things in talking to his

1 mother and in meeting with my client, Mr. McClain
2 sometimes — and I think it is due to this bipolarness or
3 manic depressive that he has difficulty at times, he is
4 open and approachable and can discuss the matter with him
5 and other times you don't get that.

6 I remember when we sat down when we were
7 going through the probation report, we sat for about a
8 half hour doing this handwriting, which he did in his own
9 handwriting at that time. It was difficult.

10 When I came to see him with the probation
11 report, to go over it the first time, I was there, the
12 meeting lasted about 8 or 10 minutes and didn't get far.
13 I came back a few days later and gave him the opportunity
14 to go through it. At that time, we had great
15 communications. I was there for over an hour. We
16 discussed the matter in detail.

17 I discussed with him the way the Court
18 works, the Sentencing Guidelines works, and the
19 importance of his sentence in the sentencing scheme. I
20 can't do it for him, and that's the problem we have.
21 Today I want him to speak to you because, when I last saw
22 him last week, that's what he indicated that he would do.
23 Today he is indicating to me that he doesn't want to
24 speak with you.

25 THE COURT: It is his right either way, and

1 I will certainly give him the opportunity.

2 MR. MCGINTY: Thanks, Judge. I understand
3 it is his right. The problem is that what I am dealing
4 with when I go through this process right here, when I
5 get to the point where I need him to come over here
6 because it is so important, it is like a potential for
7 six years savings in his life going forward.

8 Anybody that wouldn't want to get up and
9 talk about that, I hope he would do it for his mother,
10 more importantly, he might do it for his child, get up
11 there and speak to us.

12 Judge, one thing that I would ask, we go
13 ahead and look at his alcohol and drug usage from an
14 early age on. I think it is 13 or 14. In my brief, it
15 started at the age of 13. At the age 14, he was smoking
16 up to 14 marijuana cigarettes a day and then started
17 using cocaine since about 2000 and then also ecstasy at
18 an early age as well.

19 Judge, again, it is just a multitude of bad
20 things happening in his life that he just happens to
21 gravitate to. Judge, just to go through an aside on that
22 2-point reduction, if I can speak to that for a second, I
23 think that's an overstatement, I guess, is a better way
24 for me to put it.

25 Judge, he was arrested on the case, was in

1 county jail awaiting a felony case. He went down to the
2 municipal court, and basically, as I refer to it, as a
3 cleanup. Over the last four, five years, I think any
4 practitioner would tell you that the Cleveland Municipal
5 Court, most of the city jurisdictions are attempting to
6 get people licensed properly so that we don't have
7 unlicensed, non insured drivers operating. Most likely
8 he would have had that available to him.

9 And since he was going to prison on the
10 county case, which happened a couple days afterwards,
11 then he was held for a report by the Court to go with him
12 when he went to prison, oftentimes the Court in that
13 situation would strictly nolle the case because he is
14 going to jail.

15 So the cleanup right here, I venture to say,
16 that any practitioner would readily admit that if the
17 situation would arise, where he knew he was going to
18 subject himself to a potential for getting possibly
19 another twelve weeks and 24 months of sentence, that by
20 just doing that cleanup, they wouldn't do it. They would
21 have advocated fully.

22 And I think that — I know that I committed
23 that error as well as a practitioner many times when we
24 go ahead and the case is not strong and the prosecutor
25 reduces it from a felony to a misdemeanor possession, and

1 I know I have done it. And instead of just making it a
2 straight misdemeanor possession, they make it a
3 misdemeanor trafficking, which basically the elements are
4 almost the same, but one has a more serious impact. When
5 one comes over to the Federal Sentencing Guidelines, it
6 is another.

7 THE COURT: Well, there are two of these
8 convictions, one in paragraph 68 and one in paragraph 70.
9 He was sentenced to both on August the 16th of 2006, but
10 the first conduct was September '05, and the second was
11 August '06, two different times.

12 MR. McGINTY: Judge, I am on paragraph 69,
13 page 17. Is that right?

14 THE COURT: Well, 69 is the trafficking,
15 drug trafficking.

16 MR. McGINTY: Right.

17 THE COURT: That's the cleanup?

18 MR. McGINTY: No. The cleanup is the one
19 that is below it. It is a license required to operate,
20 which is paragraph 70.

21 MR. SULLIVAN: Judge, if I may, I think the
22 one in paragraph 68 shows two sentences. He was arrested
23 in September of '05; was sentenced on September 13th for
24 180 days. He then was put on probation. When he got
25 arrested the second time —

1 THE COURT: You are right, Mr. Sullivan. We
2 have got two times. Mr. Sullivan is right. Paragraph 68
3 — we have two times — on September 13th, '05
4 Mr. McClain was arrested, charged with driving without a
5 license. On August 11th, 2006, eleven months later he
6 was arrested, charged with the same offense, but it is a
7 year later.

8 He was sentenced in the '05 case the same
9 day, and September 13th he got 180 days jail suspended,
10 one year probation. Then he had a probation violation,
11 and he got the 180-day jail sentence imposed, and that's
12 why he got the two points.

13 And so — and we have got a drug trafficking
14 in March of '06 and then another license violation in
15 August '06. So I don't quite understand this cleanup
16 concept, why these aren't separate offenses as they are
17 written and charged or charged and detailed in the
18 report.

19 MR. MCGINTY: My point is, Judge, is that
20 had he not been in jail or had he — he had the ability
21 to go ahead and get his license reinstated had he not
22 been in jail, that charge would have been dismissed if he
23 came up with a good license. They give you up to 90 to
24 120 days to go ahead and do that.

25 THE COURT: He didn't have a good license,

1 did he?

2 MR. MCGINTY: Nor did he have the
3 opportunity to get it because he was in jail on the
4 felony case above. So what happens is that they take him
5 downstairs, and they just plead no contest, it is not
6 going to cost any time to go into jail on the felony
7 case. That's why —

8 THE COURT: I don't see the felony case that
9 he is going to jail on. He went to jail on October 16th
10 of '06 for 180 days for two things: The probation
11 violation stemming from his first, driving without a
12 license in '05, and then his second, driving without
13 a license. It looks like he got 180 days for both,
14 but —

15 MR. MCGINTY: Judge, if I may, on the case
16 in paragraph 69, case number 479709, he was arrested on
17 September 28th, 2006. He was arraigned the next day.
18 Pretrial was held on 10-6.

19 THE COURT: What paragraph is this?

20 MR. MCGINTY: Well, it is the court docket I
21 have.

22 THE COURT: You have got to go by the
23 report.

24 MR. MCGINTY: Paragraph 69.

25 THE COURT: All right. Paragraph 69 shows

1 he was arrested March the 8th.

2 MR. MCGINTY: Right.

3 THE COURT: And he was sentenced on November
4 the 3rd.

5 MR. MCGINTY: Correct, of 2006.

6 THE COURT: Right.

7 MR. MCGINTY: So he is in jail from the 28th
8 of September, all right, and he is over at the county,
9 and so they bring him over on the municipal court case on
10 October 16th. He knows what's happening to him. He has
11 discussed this with his counsel, and he takes a plea on
12 paragraph 70 because it is not going to cost him anything
13 in the system is my point.

14 Had he been out on bond, if we hadn't had
15 that paragraph above, he would have had the opportunity
16 at that point in time to get his license, a hard physical
17 license and present it to the Court for dismissal of the
18 case.

19 THE COURT: Except he didn't have a license.

20 MR. MCGINTY: I understand that.

21 THE COURT: So he couldn't. Whether he had
22 the opportunity or not, it wouldn't have mattered. He
23 didn't have a license.

24 MR. MCGINTY: I understand he didn't have
25 the license. I got that.

1 THE COURT: All right. I hear your
2 argument. I see this as properly reflecting separate
3 offenses and different years and different dates, so I
4 will overrule the objection. And I have looked at
5 Mr. McClain's Criminal History, and I think that V
6 adequately represents it. So I didn't want to cut you
7 off.

8 MR. MCGINTY: Oh, no, that's okay.

9 THE COURT: That was just 1 point. So I
10 will rule just rule on that.

11 Yes, Mr. McClain.

12 THE DEFENDANT: I am being charged with
13 three counts. On my indictment, it say 1591-2, and the
14 definition of that count, if I am correct, because I
15 don't understand, it says the definition of that count is
16 a sexual act with a person under the age of 18.

17 Now, part 2 states any commercial sex act as
18 defined in Section 1591 with a person under the age of
19 18, you said I got a two-point enhancement for that?

20 THE COURT: You got three 2-point
21 enhancements. Your lawyer didn't object to any of them.
22 One was for use of a computer. One was because the case
23 involved a minor committing an actual sexual act,
24 prostitution here, and third, because you were a manager
25 or leader of a criminal activity that involved five or

1 fewer people, involved at least you and your
2 co-Defendant, Chardee Barfield. I think the Government
3 gave you a break because it may have involved five or
4 more if everyone were counted, so you got a break
5 there.

6 THE DEFENDANT: So the answer to my
7 question, that would be yes?

8 THE COURT: Well, I have answered it, sir.
9 What I really want to know is, do you have anything
10 further that you want to say that reflects that you are
11 accepting responsibility for your conduct because I
12 have carefully read the statement attributed to you on
13 page —

14 THE DEFENDANT: The statement I wrote on
15 page 11.

16 THE COURT: Right.

17 THE DEFENDANT: Paragraph 36.

18 THE COURT: Right. I read that carefully,
19 and in my considered judgment, that does not reflect you
20 accepted responsibility for what you have done. You are
21 basically saying, "well, it is all her fault. I asked
22 her for an ID. She couldn't find her ID, and I didn't
23 know anything, and so that's it."

24 THE DEFENDANT: No. It states that I did
25 meet the person, and I did get her to — I did admit to

1 doing what was said in Count 1.

2 I also admitted in there that I did drive on
3 the freeway, which was admitting to Count 2, and I also
4 stated that I did have in my possession on my birthday a
5 cellphone containing pictures. That is admitting to
6 Count 3, correct?

7 THE COURT: Mr. McClain, do you have any
8 comprehension of what you did here?

9 THE DEFENDANT: I believe I thought I took
10 an open plea for offense level 31 on —

11 THE COURT: No. Forget the offense level,
12 sir.

13 I want to know: Do you have any
14 appreciation, understanding for your criminal conduct in
15 this case, what you did?

16 THE DEFENDANT: Yeah.

17 THE COURT: All right. What did you do?
18 You tell me what you did. Just forget the Guidelines,
19 forget the legalese. Just tell me what you did here,
20 sir.

21 THE DEFENDANT: I drove around a bunch of
22 prostitutes. I was a chauffeur.

23 THE COURT: That's all you did?

24 THE DEFENDANT: I was in desperate need of
25 money. I didn't want to sell drugs.

1 THE COURT: And you didn't know how old
2 these prostitutes were?

3 THE DEFENDANT: That's not true.

4 THE COURT: Well, all right. You still
5 haven't told me enough to get acceptance of
6 responsibility. You pled guilty to prostituting a girl
7 under the age of 18 and taking her across state lines for
8 prostitution.

9 Do you have any idea what a serious charge
10 that is?

11 THE DEFENDANT: Yeah. Yes, your Honor, I
12 really do.

13 THE COURT: All right. And what steps did
14 you take to the determine her age, sir?

15 THE DEFENDANT: Let's see. I went as far as
16 the Greyhound to get a ticket, which they required an ID
17 for. I took acceptance as far as asking for an ID. Only
18 thing I didn't do is meet the parents and go to
19 the Social Security Office and ask for a birth
20 certificate.

21 THE COURT: Did you see her ID?

22 THE DEFENDANT: Yes, I did.

23 THE COURT: And how old did it say she was?

24 THE DEFENDANT: She was 19.

25 THE COURT: And you saw a picture of her?

1 THE DEFENDANT: Yes, I did.

2 THE COURT: And her ID said she was 19?

3 THE DEFENDANT: Yes, and did not say
4 (a minor) on it.

5 THE COURT: All right. So you are telling
6 me you actually asked her for an ID, and she showed it to
7 you, and the ID showed — said she was 19?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: You looked at the birth
10 date?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: All right. Well, you didn't say
13 that in here. You basically said you asked her if she
14 had her ID, and she couldn't find it. So you never saw
15 her ID.

16 THE DEFENDANT: That's not true, your
17 Honor.

18 THE COURT: Well, you wrote it here, sir. I
19 didn't write this.

20 THE DEFENDANT: You are right.

21 THE COURT: Okay. So what you wrote here is
22 not true?

23 THE DEFENDANT: That's not true.

24 THE COURT: Well, why did you write it?

25 THE DEFENDANT: Because it was only a half

1 sheet of page with 16 lines, which you can sum up the
2 thing, so there was not an extra piece of paper to write
3 on.

4 THE COURT: What?

5 THE DEFENDANT: I summed it up as best as
6 possible.

7 THE COURT: Well, why did you sum it up
8 wrong? You wrote it.

9 THE DEFENDANT: I didn't sum it up, your
10 Honor.

11 THE COURT: Well, who wrote this statement.

12 THE DEFENDANT: To the best of my ability.
13 I wrote it. I signed it. My signature is on there.

14 THE COURT: All right. So you wrote it. So
15 now you are saying that wasn't true?

16 THE DEFENDANT: I am not saying that, your
17 Honor. I am saying I didn't have enough time to finish
18 writing. I summed it up as best as I could, as much
19 information as I could put on there without having all my
20 paperwork with me.

21 THE COURT: You needed paperwork to
22 remember that she showed you an ID that said she was 19
23 years old?

24 THE DEFENDANT: To reflect upon the things
25 that happened a year ago as I been sitting there, yes,

1 sir, I did.

2 THE COURT: I am going to put you under
3 oath. You raise your right hand, sir. Will you raise
4 your right hand? I am putting you under oath.

5 Do you swear or affirm the testimony you are
6 now going to give is the truth, the whole truth, and
7 nothing but the truth under pain and penalty of perjury?

8 THE DEFENDANT: Yes, your Honor.

9 ERNEST McCLAIN
10 having been first duly sworn, was examined and
11 testified as follows:

12 EXAMINATION

13 THE COURT: Okay. Now, I am going to ask
14 you again did you ask this young woman for an ID?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: And when specifically did you
17 ask her for an ID?

18 THE DEFENDANT: In September, your Honor.

19 THE COURT: September of what year?

20 THE DEFENDANT: 2011.

21 THE COURT: All right. And where was this
22 conversation? Did she show you an ID?

23 THE DEFENDANT: In September, yes.

24 THE COURT: All right. Look me in the eye,
25 did she show you an ID?

1 THE WITNESS: Yes, your Honor. The
2 first conversation was in August, I believe, end of
3 August.

4 THE COURT: August of 2009?

5 THE DEFENDANT: No, August of 2011.

6 THE COURT: August of 2011.

7 THE DEFENDANT: Yes, first initial contact,
8 first initial questioning, that's when she got her ticket
9 from the Greyhound.

10 THE COURT: All right. When specifically,
11 Mr. McClain, did she show you an ID?

12 THE DEFENDANT: September I want to say the
13 15th.

14 THE COURT: September 15th of 2011?

15 THE DEFENDANT: Yes.

16 THE COURT: September of 2011. All right.

17 Where was this? Where were you and the
18 young girl?

19 THE DEFENDANT: The Earth Flight Club
20 downtown, Cleveland, Ohio.

21 THE COURT: And you asked that night or that
22 day for an ID?

23 THE DEFENDANT: I asked her "we going out.
24 We need ID. Where is your ID?" She said she had it.
25 She showed me an ID. I looked at the ID, I looked at the

1 picture, I looked at the address.

2 THE COURT: All right. It had the name that
3 she was giving you?

4 THE DEFENDANT: No. It had a different
5 name.

6 THE COURT: Well, why did you accept it?

7 THE DEFENDANT: I didn't. That was the
8 problem.

9 THE COURT: So you knew it was a false ID.

10 THE DEFENDANT: That's not true. The
11 picture was her on it. I am not a detective, I am not a
12 cop. I don't know a fake ID. I am asking why is this
13 person lying to me?

14 THE COURT: All right.

15 THE DEFENDANT: So the person decided to run
16 off, and I did not see the person for almost four
17 and-a-half months.

18 THE COURT: All right. So the young woman
19 handed you an ID with her picture, with someone else's
20 name. Is that what you are saying?

21 THE DEFENDANT: It was (a minor) that was on
22 the ID.

23 THE COURT: All right. And she told you her
24 name was (a minor)?

25 THE DEFENDANT: No. The ticket itself

1 stated that her name was — one second.

2 THE COURT: Well, whatever.

3 The name on the ticket was different
4 than the name on the ID. Is that what you are
5 saying?

6 THE DEFENDANT: Different, the name on the
7 ID and different on the name with the internet thing I
8 had just seen. It was different than the (a minor) that
9 is in my paperwork. All three names were different.

10 THE COURT: All right. So you have
11 three different names. So you know it is a good ID,
12 right?

13 THE DEFENDANT: I found that out as of
14 January 3rd, 2012.

15 THE COURT: You needed to wait three more
16 months to know that an ID with three different names is
17 not a bad ID?

18 THE DEFENDANT: It was not three different
19 names until January 12th, 2013.

20 THE COURT: Well, you just said the ID was a
21 different name than the name she told you.

22 THE DEFENDANT: Right. The third name
23 didn't come into play until January —

24 THE COURT: All right. You had two names.
25 You had her name and the name on the ID.

1 Sir, I am giving you a chance to maybe save
2 you six or seven years in prison. You only have a few
3 more minutes.

4 THE DEFENDANT: I am trying to find the
5 name —

6 MR. McGINTY: He said he doesn't — it
7 doesn't matter to him.

8 THE DEFENDANT: I admitted my part.

9 THE COURT: Well, do you have anything more
10 you wish to say, sir?

11 THE DEFENDANT: Well, I met the said person
12 in Columbus. The person received the ticket from
13 Columbus to Cleveland, Ohio. The people at Greyhound
14 gave her the ticket. I paid for the ticket. I stated
15 that.

16 THE COURT: All right. You bought her a
17 ticket?

18 THE DEFENDANT: Yeah. I paid for the
19 ticket.

20 THE COURT: All right.

21 THE DEFENDANT: I told her to come to
22 Cleveland because what she was doing in Columbus she
23 could already do —

24 THE COURT: Well, tell me that.

25 THE DEFENDANT: I told the person that was

1 engaging in prostitution in Columbus, that if you come to
2 Cleveland, you probably will have a better chance and
3 going more places with your prostitution than you would
4 walking around with a \$40 hotel in Columbus. The person
5 accepted my offer.

6 THE COURT: All right.

7 THE DEFENDANT: Said that she would go to
8 the Greyhound and get on there in a couple days. She had
9 to straighten some things out with her family. I left;
10 went out of town; came back. I get a call that they are
11 coming to Cleveland. I said "okay. I will meet you."

12 Got a call, "you in Cleveland?"

13 I couldn't meet the person, so I paid
14 somebody to go pick the person up. They dropped the
15 person off at the hotel room. I spoke with her. I
16 left.

17 THE COURT: And how did she get to
18 Pittsburgh? You knew you were arranging to take her to
19 Pittsburgh for prostitution, right?

20 THE DEFENDANT: That was five months later.

21 THE COURT: All right. Fine. And the one
22 time she showed you an ID you knew it was not a valid ID,
23 right?

24 THE DEFENDANT: Right.

25 THE COURT: Okay. You never bothered to ask

1 her for a proper ID or correct ID, correct?

2 THE DEFENDANT: I did. She didn't have it.
3 I left it alone. That was after the fact because she
4 stated she had it. So I left it alone. After you state
5 that you have something and I asked you for it, you say
6 you don't —

7 THE COURT: All right. And you realize that
8 was a big mistake, correct?

9 THE DEFENDANT: So I left immediately from
10 Pittsburgh and left everything alone. I just completely
11 left everything alone.

12 THE COURT: Yeah, and why did you do that?

13 THE DEFENDANT: Because I got tired of the
14 games. I could find something better to do with my
15 time.

16 THE COURT: Well, you may have been tired of
17 the games, but you knew she was prostituting for you and
18 you were making half the money she made, right?

19 THE DEFENDANT: No, that's not true.

20 THE COURT: She kept all the money she made.
21 You had nothing to do with it?

22 THE DEFENDANT: After she got back to Ohio,
23 she was not prostituting for me.

24 THE COURT: Well, when she was in
25 Pittsburgh, she was, right?

1 THE DEFENDANT: She didn't prostitute in
2 Pittsburgh. She went to Pittsburgh with the intent to
3 prostitute. There was no transactions made in
4 Pittsburgh.

5 THE COURT: Well, the point was to profit
6 you, and knowing the one time she showed you an ID, it
7 was not a good one you never checked again, right?

8 THE DEFENDANT: I never received the ID. I
9 asked again. I inquired.

10 THE COURT: Well, she didn't show it.

11 THE DEFENDANT: Correct.

12 THE COURT: And you realize that was a big
13 mistake?

14 THE DEFENDANT: Yes, and I got upset, and I
15 left it alone. I got tired of the games.

16 THE COURT: All right. Is there anything
17 else you want to say, sir, before I pronounce sentence?
18 I've asked questions. Now is your opportunity. If there
19 is anything else you want to say, this is your
20 opportunity.

21 THE DEFENDANT: I want to apologize to my
22 parent, my mother, my grandmother, I want to do that. As
23 far as the comment, you know, I just want to apologize to
24 my mother, my daughter, my sister. I was raised by
25 females, so I may not know what was going on, but I

1 didn't choose this life.

2 I ask that the Court — I am asking you — I
3 want to be home before I am 60. I didn't kill nobody.
4 There is people intending to blow up buildings around
5 here getting ten years, and I am facing 30 because of
6 something that seems to be more severe than endangering
7 the lives of people in the United States of America.

8 You got 107 people on a drug conspiracy, and
9 everybody got less time than me put together. So I am
10 asking for your mercy of not getting the full thing. The
11 departure, I am not too worried about it. I am worried
12 about the long end.

13 THE COURT: Okay. Thank you, sir.

14 Mr. Sullivan or Ms. Klump, anything you
15 would like to say on behalf of the Government?

16 MR. SULLIVAN: Thank you, Judge. Well,
17 just in trying to assess the 3553(a) factors, I think the
18 seriousness of the offense can't be stated more strongly.
19 We have been talking here about a man who prostituted a
20 15 year-old child repeatedly in numerous locations across
21 the Northern District of Ohio and also in Pittsburgh.

22 And it was on more than one occasion, and I
23 think it is clear from the factual — I am not sure if it
24 is really clear from the factual basis of what's written
25 in the PSR — but he met her in Columbus. He paid for

1 her trip to come to Cleveland, so she could prostitute
2 for him. She did repeatedly. She was then dropped off
3 at a youth homeless shelter.

4 From there, she was sent back home to
5 Columbus to her family. He then picked her up in
6 Columbus and took her to Pittsburgh. So on two separate
7 periods he had taken this child and had her prostitute
8 herself on numerous occasions, numerous times.

9 You know, Mr. McGinty talked much about the
10 Defendant's troubled childhood history and difficulty
11 growing up and some of the difficulties he endured. That
12 may all be true, but as an adult, when faced with a 15
13 year-old child, obviously, a troubled child, he had a
14 choice of whether he could try to end that cycle for
15 another child or perpetuate it, and he chose to
16 perpetuate it by profiting from her exploitation.

17 So even though he was a product of a
18 troubled youth, he did nothing to try to help the next
19 generation. He helped ensure that another child is going
20 to become an adult who will have a troubled youth because
21 she was forced to prostitute for him repeatedly across
22 the District.

23 As far as the Defendant's history and
24 characteristics, again, his Criminal History score
25 reflects his Criminal History and characteristics and

1 shows that certainly the Defendant is like an athlete,
2 can do several different events. We have drug offenses,
3 stolen property offenses, violent — resisting arrest,
4 escape, and now we have child sex trafficking.

5 He is a young man and he has a long record
6 already engaging in criminal activity, and, you know, I
7 think maybe when you are assessing whether or not the
8 Defendant accepted responsibility, maybe his last
9 statement would be the most helpful because in the list
10 of people he apologized to notably absent was the victim
11 in this case.

12 The victim was 15 years old and has been
13 exploited by him for his profit. I think that shows
14 certainly whether or not he accepted responsibility but
15 also shows his true feelings in this case, and I think it
16 reflects why his sentence in the Guidelines is the
17 sentence that is necessary in this case, and we would ask
18 you to pass sentence.

19 THE COURT: Thank you, Mr. Sullivan.

20 The Court has reviewed the very thorough
21 report, and I guess I should mention we had Mr. Capuano
22 here subbing for Mr. Abraham. The Court has reviewed the
23 thorough report, and I have listened both carefully to
24 both counsel and at length to Mr. McClain.

25 The touchstone of sentencing is 18 U.S.C.

1 3553(a), and I am required to learn everything I can
2 about Mr. McClain, everything I can learn about these
3 offenses, compute the advisory range correctly, which I
4 have done, and consider it along with all the other
5 factors set out in the statute and, ultimately, give a
6 sentence that is sufficient but not greater than
7 necessary to meet the statutory purpose of sentencing,
8 punishment, deterrence, protecting the community, and
9 rehabilitation. All right.

10 First, although it took a long time to
11 accomplish it, I will find that Mr. McClain has accepted
12 responsibility for his conduct and give you the 2 points
13 for acceptance and the third level off for a timely
14 guilty plea.

15 That gives you an adjusted offense level of
16 33, Criminal History Category V, 210 to 262 months, and,
17 Mr. McClain, you need to understand that you got a big
18 break. I didn't have to do it based on what you had
19 written, and I certainly didn't have to engage in about a
20 ten-minute discussion with you to finally bring it out,
21 but I did it because I thought that you did understand
22 the seriousness of what you did.

23 You had just not acknowledged it publicly,
24 and I thought it was important that you do it so I've
25 determined that you had.

1 Next, I do find that a sentence within the
2 advisory range is sufficient but not greater than
3 necessary to accomplish those purposes of punishment
4 deterrence, protecting the community, and rehabilitation.
5 This is a very serious crime, taking a minor across state
6 lines for sex trafficking, and I am going to sentence you
7 in the middle of the range, 240 months, and that's 20
8 years. My feeling is, if that doesn't do it, a longer
9 sentence isn't going to accomplish anything.

10 That sentence will be followed by five years
11 of supervised release. There will be drug, alcohol,
12 mental health aftercare, the SORNA provisions, and search
13 and seizure. I am not imposing a fine. I don't believe
14 you have the resources to pay one.

15 There is a mandatory \$300 special
16 assessment, \$100 on each of the three counts due and
17 payable immediately.

18 Mr. McClain, you are a young person. You
19 have had a pretty hard life. There are a lot of things
20 that happened to you that shouldn't happen to anyone.
21 Some were not of your choosing at all, but the drug and
22 alcohol use were, and running a prostitution ring and
23 doing some of the other things you did, those were your
24 choosing.

25 You can't blame that on anyone else, but you

1 will still be relatively young when you get out, and I
2 think you have the capacity to do something different,
3 but it will be your choice.

4 I believe under the plea agreement you have
5 waived your right to appeal, but out of an abundance of
6 caution, I advise each Defendant of his right to appeal
7 the conviction and/or the sentence. So if you wish to do
8 so, you have 14 days, and you should consult with
9 Mr. McGinty about that.

10 Do you understand you have that right?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: All right. Are there any
13 objections that either counsel wish to place on the
14 record?

15 MR. SULLIVAN: No objection, Judge. I would
16 first of all, say that there was no plea agreement in
17 this case.

18 THE COURT: Oh, all right. I forgot. I
19 made a mistake.

20 Then, of course, Mr. McClain has the right
21 to appeal, which I advised him of. You are right, he
22 pled to the indictment, you are correct.

23 MR. SULLIVAN: And the only other point,
24 Judge, if you could just now order that the record of
25 this proceeding be redacted in the three instances where

1 the victim's name was mentioned in open Court —

2 THE COURT: What I will do, we will just put
3 a bracket around that portion. I will direct the court
4 reporter to do that. It was probably my fault for
5 eliciting it and not taking steps not to. So it is my
6 error, and we will just put a bracket around the specific
7 name of the victim because we have taken steps to avoid
8 that.

9 Okay. Anything further that either counsel
10 wish to place on the record?

11 MR. McGINTY: No, your Honor.

12 MR. SULLIVAN: No. And you have no
13 objection to any of that?

14 MR. McGINTY: No, I didn't.

15 THE COURT: All right. And then lastly,
16 Mr. McClain, Mr. McGinty has mentioned you do have a
17 number of family members in the back. I know it is not
18 easy for them to be here for this, and it is probably not
19 so easy for you to have them here, but you are lucky to
20 have a supportive family.

21 Sadly, I sentence people because they walk
22 in alone, and they walk out alone, and so I appreciate
23 their attendance today, and with that, we are adjourned.
24 Thank you.

25 (Hearing concluded 2:25 p.m.)

C E R T I F I C A T E

I, George J. Staiduhar, Official Court
Reporter in and for the United States District Court,
for the Northern District of Ohio, Eastern Division,
do hereby certify that the foregoing is a true
and correct transcript of the proceedings herein.

s/George J. Staiduhar
George J. Staiduhar,
Official Court Reporter

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